

UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF IOWA

IN RE

BANKRUPTCY NO.

JEFFREY ALAN HOLTZ  
and HEATHER MARINA HOLTZ

85-00059W

Debtors.

FIRST NATIONAL BANK  
OF OELWEIN,

Plaintiff,

ADVERSARY NO. 85-0094W

vs.

JEFFREY ALAN HOLTZ  
and HEATHER MARINA HOLTZ

Defendants.

J U D G M E N T

FILED  
U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF IOWA

JUN 12 1986


BARBARA A. EVERLY, CLERK

Pursuant to the Order entered herein on June 12, 1986;

IT IS ORDERED Plaintiff First National Bank of Oelwein recover the sum of Sixty Thousand Nine Hundred Seventy-Four and 18/100 Dollars (\$60,974.18) with interest thereon at the legal rate of 7.03% from the 12th day of June, 1986 from Jeffrey Alan Holtz, Defendant in Adversary No. 85-0094W; Plaintiff's complaint is denied in all other respects and is dismissed.

IT IS FURTHER ORDERED this judgment shall be entered in the docket of the Clerk of this Court and that notice of the entry of this judgment shall be given by ordinary mail to Dan Childers and David Grinde, Attorneys for Debtors/Defendants, 9th Floor, The Center, Cedar Rapids, Iowa 52401; and to Sam Anderson, Attorney for Plaintiff/Bank, P. O. Box 1200, Waterloo, Iowa 50704.

ORDERED June 12, 1986.

  
MICHAEL J. MELLOY  
Bankruptcy Judge

RECORDED: Volume 1  
Page 224

Copies mailed to parties as  
above set forth this  
June 12, 1986,

  
Deputy Clerk, Bankruptcy Court  
P. O. Box 4371, Cedar Rapids, IA 52407

Satisfaction 11/19/87  
mediated 12/15/86

FILED  
U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF IOWA

# United States District Court

DEC 18 1986

NORTHERN

DISTRICT OF

IOWA

BARBARA A. EVERLY, CLERK

FIRST NATIONAL BANK OF OELWEIN,

Plaintiff,

v.

JEFFREY ALAN HOLTZ and HEATHER  
MARINA HOLTZ,

Defendants.

## JUDGMENT IN A CIVIL CASE

CASE NUMBER: C 86-2075

☐ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ **Decision by Court.** This action came before the Court for a ~~trial~~ <sup>decision</sup> ~~hearing~~ <sup>decided</sup> before the Court. The issues have been ~~tried~~ <sup>heard</sup> and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

Defendants' appeal from the decision of the bankruptcy court urging reversal or in the alternative modification of the decision is denied.

Plaintiff's cross-appeal granted in part.

The judgment appealed is modified by increasing it by \$28,000 to the sum of \$88,974.18

FILED  
CEDAR RAPIDS HDQTRS OFFICE  
NORTHERN DISTRICT OF IOWA

DEC 18 1986  
2:05 pm  
WILLIAM J. KANAK - Clerk  
By: Satya Smith  
DEPUTY

December 18, 1986

Date

WILLIAM J. KANAK

Clerk

Cheryl Scott  
(By) ~~XXXXXX~~ Chief Deputy Clerk

Recorded Vol. I  
Page 224 ma

Blake

85-0094W

62b986ED  
CEDAR RAPIDS HDQTRS OFFICE  
NORTHERN DISTRICT OF IOWA

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
EASTERN DIVISION

DEC 18 1986

2:05 pm

WILLIAM J. KANAK - Clerk

By: Ratsup Smith  
DEPUTY

IN RE:

JEFFREY ALAN HOLTZ and  
HEATHER MARINA HOLTZ,

Debtors,

-----  
FIRST NATIONAL BANK OF OELWEIN,

Plaintiff,

vs.

JEFFREY ALAN HOLTZ and  
HEATHER MARINA HOLTZ,

Defendants.

NO. C 86-2075  
(Bankruptcy No. 85-00059W)

FILED  
U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF IOWA

DEC 18 1986

BARBARA A. EVERLY, CLERK

ORDER ON APPEAL

This matter is before the court on defendants' appeal, filed June 23, 1986, of the bankruptcy court's decision<sup>1</sup>, entered June 12, 1986, and plaintiff's cross-appeal, filed July 17, 1986. The court, having read the decision of the bankruptcy judge and the briefs on appeal, enters the following order.

The defendants argue that the bankruptcy court erred in finding that Jeffrey Holtz willfully and maliciously converted grain which was secured to the bank during the period from September 27, 1984 to December 31, 1984. Specifically, defendants argue that Mr. Holtz lacked the willfulness and malice which are essential elements of a violation of 11 U.S.C.

<sup>1</sup>The Honorable Michael J. Melloy, United States Bankruptcy Judge.

§ 523(a)(6). The finding of fact that Mr. Holtz acted willfully and maliciously will not be set aside on appeal unless it is clearly erroneous. Bankr. Rule 8013. Here, there is ample evidence to support the finding of willfulness and malice in the defendant's acts of conversion. Consequently, that finding will not be disturbed on appeal.

In the alternative, defendants request that this court reduce the amount of judgment entered below. Defendants claim that since one of the checks which was included in the judgment was issued to defendants before the bank requested all local elevators to issue the defendants only jointly payable checks, that check should not have been included in the judgment total. Defendants have failed to show that the bankruptcy court's finding of willful, malicious conversion with regard to the disputed check is clearly erroneous. Consequently, the bankruptcy court's finding that the defendant maliciously and willfully converted funds by depositing a check for \$18,126.50 on September 25, 1984 will be affirmed.

The plaintiff cross-appeals the bankruptcy court's decision and argues that this court should add \$1,212.57 to the judgment. Apparently, plaintiff forgot to mention to the bankruptcy court in oral argument that the Westgate Elevator issued a check to defendants in that amount on July 31, 1984. However, plaintiff also notes that the check of July 31, 1984 was in evidence (App. Ex. #21, p. 26). The plaintiff urges this

court to extend the bankruptcy court's finding of willful malicious conversion back in time to include this additional check. Since the check of July 31, 1984 was in evidence and the bankruptcy court found that Mr. Holtz's malice and willfulness extended back to the September 27, 1984 deposit, but not to the check of July 31, 1984, this court will not add the earlier check to the judgment unless the bankruptcy court's decision to exclude said check from the judgment total was clearly erroneous. Since no such showing has been made, the judgment of the bankruptcy court will not be amended to include the check of July 31, 1984.

Finally, plaintiff argues that the bankruptcy court erred as a matter of law in excluding from the judgment against the defendant the \$28,000 rent payment for 1984 farm rent. The bankruptcy court found that the total value of secured property converted by the defendant was \$88,974.14. From that total, the court deducted the defendant's \$28,000 rent payment. In support of that deduction, the court stated that:

The landlord's statutory lien against the crop grown on rented land has priority over any consensual lien given by the debtor in the crop grown upon that land. Corydon State Bank v. Scott, 252 N.W. 536, 538-539 (Iowa 1934); Dilewbeck v. Security Savings Bank, 169 N.W. 675 (Iowa 1918). Consequently, of the \$88,974.18<sup>2</sup> converted by Debtor, Bank would not have a valid claim as against \$28,000.00 of that amount.

(Exhibit 34, pp. 11-12.)

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<sup>2</sup>It is unclear whether the amount should be \$88,974.18 or \$88,974.14.

Again the issue of whether or not the debtor had paid \$28,000 of the converted 1984 grain proceeds to a landlord for 1984 farm ground rent is a fact question subject to the clearly erroneous rule. While the evidence supporting the finding is not overwhelming and consists of the bank officer's testimonial recitation and contemporaneous written notes of what the debtor told him had been done with the proceeds, there is no evidence to the contrary. While this court may not have been willing to make the same finding based on the same evidence, it cannot say that the bankruptcy judge's factual finding based thereon is clearly erroneous. But having determined that the debtor did pay \$28,000 of the grain proceeds for rent, the question remains whether or not the landlord to whom the payment was made had a landlord's lien superior to that of the bank in the proceeds so as to justify the reduction of the amount of the nondischargeable portion of the debtors' bank obligation.

There is no doubt that the bankruptcy court's legal conclusion that the landlord had a superior lien in the crop is correct. However, the legal issue raised by this appeal is whether the landlord's statutory lien on the crop follows and attaches to the proceeds received from the sale of the crop when the tenant sells the crop without having paid the rent. Longstanding and well settled Iowa case law holds that the landlord's lien follows the crop and the landlord can recover even from a bona fide purchaser of the crop who has no notice of

the lien. Hodges v. Trans-Mississippi Grain Co., 143 N.W. 501, 502 (Iowa 1913). But there is also authority to the effect that once the tenant converts the grain into cash and deposits the cash in a bank the landlord has no landlord's lien on the money. See Stegemann v. Bendixen, 260 N.W. 14, 16 (Iowa 1935). However, if there is an agreement between the landlord and the tenant that the lien is to follow the proceeds, then a court of equity will impose a constructive trust on the proceeds. Id. A landlord of course has the right to take an ordinary security interest in the crop and its proceeds pursuant to a separate grant of a security interest from the tenant and perfect that contractual lien pursuant to the U.C.C., but absent either an agreement or a contractually granted and perfected security interest, the Iowa statutory landlord's lien would not follow into the proceeds. Id. The landlord's remedy would be to follow the crop and sue the elevator or other purchaser.

In the case at bar, there is no evidence of any such agreement between the debtor and his landlord which would permit a court of equity (which is what a bankruptcy court is) to impress a trust on the crop proceeds to secure the payment of the rent (which is the effect of the order appealed below). Hence, there is no factual basis for the bankruptcy court's conclusion that the landlord would have had a lien on the crop proceeds superior to the bank's lien which justifies the reduction of the

debtors' nondischargeable bank obligation, and that legal conclusion is erroneous.

ORDER:

Accordingly, It Is Ordered:

1. Defendants' appeal from the decision of the bankruptcy court filed June 23, 1986, urging reversal or in the alternative modification of that court's decision is denied.
2. Plaintiff's cross-appeal is granted in part.
3. The judgment appealed from is modified by increasing it by \$28,000 to the sum of \$88,974.18.

Done and Ordered this 18<sup>th</sup> day of December, 1986.

  
\_\_\_\_\_  
David R. Hansen, Judge  
UNITED STATES DISTRICT COURT


Clerk To Furnish Copies To:

Samuel C. Anderson, Esq.  
Box 1200  
Waterloo, Iowa 50704-1200

David Grinde, Esq.  
Suite 950 - The Center  
Cedar Rapids, Iowa 52401

Clerk, United States Bankruptcy Court - hand delivered

Copies mailed certified, return receipt requested on Dec. 18, 1986 to parties listed above w/Judgment

 Deputy Clerk



FILED  
U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF IOWA

NOV 19 1987

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
EASTERN DIVISION

BARBARA A. EVERLY, CLERK

IN RE:	)	
	)	
JEFFREY ALAN HOLTZ and	)	
HEATHER MARINA HOLTZ,	)	No. C 86-2075
	)	
Debtors,	)	Bankruptcy Adversary
	)	No. 85-0094W
<hr/>		
FIRST NATIONAL BANK OF OELWEIN,	)	Bankruptcy No. 85-00059W
	)	
Plaintiff,	)	SATISFACTION OF JUDGMENT
	)	
vs.	)	
	)	
JEFFREY ALAN HOLTZ and	)	
HEATHER MARINA HOLTZ,	)	
	)	
Defendants.	)	

COMES NOW Plaintiff, The First National Bank of Oelwein,  
pursuant to the Covenant Not to Levy Execution on Judgment  
entered into between the First National Bank of Oelwein and  
Jeffrey Alan Holtz, on April 2, 1987, entered into with fair and  
reasonable consideration, hereby enters a satisfaction of  
judgment with the above-captioned court.

FILED  
U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF IOWA

NOV 19 1987

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
EASTERN DIVISION

BARBARA A. EVERLY, CLERK

IN RE:	)	
	)	
JEFFREY ALAN HOLTZ and	)	
HEATHER MARINA HOLTZ,	)	No. C 86-2075
	)	
Debtors,	)	Bankruptcy Adversary

SWISHER & COHRT

By



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528 West Fourth Street  
P.O. Box 1200  
Waterloo, Iowa 50704  
(319) 232-6555

Attorneys for First National  
Bank of Oelwein

Copy mailed to  
filing attorney

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